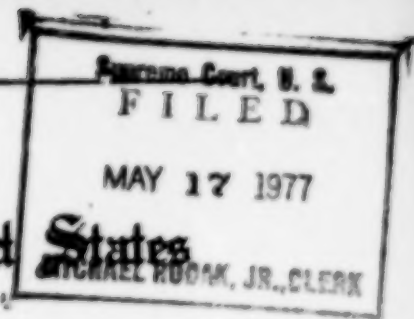


In The  
**Supreme Court of the United States**



October Term, 1976

No. **76-1613**

LaGRETTA B. FISHER,

*Petitioner,*

vs.  
**ROBINSON**  
~~UNITED STATES OF AMERICA,~~

*Respondent.*

~~MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF~~  
~~CERTIORARI WITH~~ PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE THIRD CIRCUIT

LaGRETTA B. FISHER

*Petitioner pro se*

339 Thurman Avenue

West Berlin, N.J. 08091

(609) 767-7274

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In The

## Supreme Court of the United States

October Term, 1976

No.

LaGRETTA B. FISHER,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

## MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

Re: Third Circuit Court of Appeals  
Docket No. 76-2195 (D.C.N.J. 75-2242)

LaGretta B. Fisher vs. Lt. Gen. Wallace H. Robinson,  
Jr., Official of the U.S. Government

LaGretta B. Fisher, petitioner, *pro se*, hereby moves the  
Court for leave to file a writ of certiorari to review the judgment

**B**

order (Appendix A) entered by the U.S. Court of Appeals for the Third Circuit in the above-entitled case. In support of this motion, it is averred:

(1) That the judgment order in favor of respondent was obtained by deceitful and fraudulent practices throughout the entire proceedings and the "whole" record will reveal numerous instances of abuse of discretion and the court's action/inactions and omissions were so egregiously erroneous as to be characterized as beyond its "jurisdiction" and power, and/or obstruction of justice.

(2) Neither the District Court nor the Court of Appeals did anything on its own initiative to discourage such actions which resulted in an unjust and unfair trial on the record and decision and that neither court exerted any effort to ascertain the whole "truth" or to ensure petitioner's right of due process of law.

(3) The Government attorney, protected by immunity, was permitted to gain an unfair "tactical" over petitioner, by dilatory and unlawful tactics, manipulating and circumventing the laws, which laws were designed to obtain just and speedy consideration of the issues and relief sought in the complaint. By so doing, respondent escaped and avoided legal liability and was provided carte blanche with impunity and with no accountability for their actions.

(4) During the proceedings, petitioner suffered personal indignities, humiliation and undue hardship in her endeavor to obtain justice from her own Government.

**BEST COPY AVAILABLE**

**C**

(5) The judgment order cited above constitutes civil death and loss of all legal personality to petitioner.

(6) Review by this Court is necessary to avoid foreclosure forever of petitioner's Constitution and imprescriptible rights taken away without due process of law and equal treatment; and to avoid gross miscarriage of justice. When the "whole" record is read with dispassion, petitioner is confident that this Court will concur that relief sought is not available in an appellate court or any other court.

(7) This motion is requested in the public interest since the integrity and reputation of our judicial system is involved.

Our democratic principles embraced in the Constitution of the United States, is the law of the land, for all, not just a selected few. Any concession that the Constitution, regardless of purpose, motives or intentions, allows any exception would inevitably be used to deprive those who are most vulnerable and invite every man to become a law unto himself. Protection and rights would be meaningless. The subject of rights and wrongs embraces the entire subject of human relations and it is a fundamental principle of law that for every wrong (the violation of a right) there is a remedy.

Government officials should be subjected to the same rules of conduct that are commanded of others. If the Government fails to observe the law, the existence of our lawful Government governed by the people, not by force, and our "living" Constitution will be imperiled.



D

Like the right to die with dignity, your review is necessary in order to give petitioner the opportunity to lose with dignity, if the "whole" record so dictates and petitioner can once again respect our judicial system and maintain the faith of our Constitution of the United States with regard to due process of law and equal treatment.

s/ LaGretta B. Fisher  
LaGretta B. Fisher, *pro se*  
339 Thurman Avenue  
W. Berlin, N.J. 08091

I

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In The

**Supreme Court of the United States**

October Term, 1976

---

No.

LaGRETТА B. FISHER,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT**

---

LaGretta B. Fisher prays that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on April 5, 1977, petition for rehearing denied April 22, 1977.

### CITATIONS TO OPINIONS BELOW

Judgment order of the United States Court of Appeals for the Third Circuit affirming judgment of the United States District Court for the District of New Jersey, which copy is attached to this petition as Appendix A.

Sur petition for rehearing denied by the United States Court of Appeals for the Third Circuit, which copy is attached to this petition as Appendix B.

Motion of United States Court of Appeals for the Third Circuit, denying motion by appellant to strike the affidavit of Stephen J. Daner, official court reporter, which copy is attached to this petition as Appendix C.

Order of federal Judge Stanley S. Brotman, United States District Court of New Jersey, which copy is attached to this petition as Appendix D.

Order filed June 18, 1976 by Stanley S. Brotman, Judge, United States District Court of New Jersey, dismissing complaint with prejudice and without costs on grounds that the court lacked subject matter jurisdiction, which copy is attached to this petition as Appendix E.

### JURISDICTION

The judgment order of the United States Court of Appeals for the Third Circuit was entered on April 5, 1977. Petition for rehearing was denied April 22, 1977.

Motion for leave to file petition for writ of certiorari and petition for writ was filed on May 3, 1977. By letter dated May 4, 1977 of the Supreme Court of the United States, Office of the Clerk, Washington, D.C. the above motion and petition were returned for failure to comply with the Rules of the Supreme Court, and granted petitioner opportunity to revise and resubmit this petition. Therefore, this petition is timely filed pursuant to Rule 39 of the Supreme Court of the United States.

The jurisdiction of this Court is invoked under 28 U.S.C. §1651(a).

In light of all circumstances and the review of the whole record, questions presented herein are appropriate for the Supreme Court as the record will show clear abuse of discretion and usurpation of judicial power, which is clear and indisputable, of public importance as it relates to our form of government and judicial systems and to prevent grave injustice. There is no other relief and remedy available in appellate court or any other court.

### QUESTIONS PRESENTED

(1) Can the federal court elect to choose which issue(s) and allegation(s) of a complaint will be considered, without explanation or ruling; ignore considering all issues and allegations properly pleaded in the complaint, permitting dismissal by splitting the issues and preventing petitioner from having a full and fair trial on merits?

2. Although the United States Attorney is immune from misconduct, once false and misleading information is shown to the court, doesn't the court have responsibility in the administration of justice to ensure that the rights of the victim are protected and just consideration of the issues and facts are made in accordance with established rules?

3. To ensure fair trial, due process of law and equal treatment, does the court have the right to exclude or include evidence to which no objection by the other party has been made, without explanation or ruling, when such inclusion/exclusion affects substantial rights of appellant and same were crucial to the outcome?

4. Can the court decide or elect to give judicial notice when such notice is mandatory by law or specifically requested and which statements are to be accepted as true?

5. When the District Court considers matters outside the pleadings, should a motion for dismissal be considered a motion for summary judgment, providing the party opposes benefit of all favorable inference?

6. Can the Court of Appeals affirm a judgment not made by the District Court and without the entire records and transcript, when the District Court dismissed the complaint because of lack of subject matter jurisdiction?

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF COURT INVOLVED

### Article IV of the Constitution of the United States

#### Section 1

Full faith and credit shall be given to each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

#### Section 2

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

### Article VI of the Constitution of the United States

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.



The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### Amendment Five of the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### Amendment Six of the Constitution of the United States

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

#### Amendment Eight of the Constitution of the United States

Excessive bail, shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### STATEMENT OF THE CASE

In connection with RIF/Adverse Action effective January 31, 1971 considered to be unlawful, unwarranted, procedurally and constitutionally defective, petitioner, on December 18, 1975 filed a *pro se* civil action in the United States District Court of the District of New Jersey against Lt. Gen. H. Wallace, Jr., Director, Defense Supply Agency, Official of the United States Government. The complaint alleged that the Agency did knowingly and wilfully engage in gross negligence, violate its own regulations and SCS regulations, was fraudulent and misrepresented, engaged in discriminatory and unfair employment practices which were continuous and deliberate, maliciously and illegally interfered and invaded petitioner's legal and constitutional rights, misused public funds, denied administrative due process and equal treatment. Petitioner further alleges to have been the victim of a death threat, bribed, threatened with imprisonment without probable cause and due process. Upon appeal, actions of the Agency were sanctioned and approved by the CSC and Board of Appeals whose inactions and decisions were procedurally and constitutionally defective, made in bad faith, fraudulent, arbitrary, capricious and not supported by substantial facts and evidence. Complaint was supported by undisputed, indisputable facts and documents required to be judicially noticed. Details set forth in the complaint satisfied "Exhaustion of Administrative" remedies required prior to seeking judicial relief and remedy.

Jurisdiction of the District Court was founded on the existence of federal questions and the amount in controversy, which exceeded \$10,000 exclusive of interest and costs. Jurisdiction was invoked by actions arising under the Constitution of the United States; to wit: Article IV, Sections 1 and 2; Article VI, Amendment Five; Amendment Six, Amendment Eight, Amendment Thirteen and Amendment Fourteen. Also, Title 5, U.S.C. §§701, 702, 703 and 706; Act of Equal Employment Opportunity of 1972, P.L. 92-261, amending 42 U.S.C. §2000e *et seq.* (1970) and memorandum filed with the Supreme Court by Solicitor General Robert H. Bork, in which the Justice Department broadened its right to use guidelines so that United States Government workers can sue in federal court for discrimination violations prior to 1972; Title 42, U.S.C. §1981; Title 28, U.S.C. §1346(a) (2) and (b) (1970); Title 28, U.S.C. §1331(a) (1970); Title 5, U.S.C. §3502; Title 5, U.S.C. §§5595 and 5596(b) (1970); Title 5, U.S.C. §7501; Title 5, U.S.C. §7512; Title 5, U.S.C. §1301. In defense of any challenges by respondent regarding jurisdiction and/or cause of action, annexed to the complaint as Exhibit G was memorandum providing additional cases and laws relevant to this action.

For reasons alleged and documented in the complaint and arising out of or during the course of said actions and conditions, lengthy details of irreparable damage, injury, loss of property, happiness, liberty, etc. to petitioner was alleged in complaint, for which damages were requested, as well as reinstatement to GS-1102-12, and back pay and compensatory seniority retroactive to November 17, 1970 were sought.

Complaint and summons were served on respondent on January 6, 1976 and an answer filed by respondents on April 20, 1976. During the proceedings, several motions were made. No amended complaint or answer was filed. Respondent moved to have the complaint dismissed, which was granted by order of the District Court on June 18, 1976 due to lack of subject matter jurisdiction. Notice of appeal was filed on August 4, 1976 in the District Court by petitioner and timely application for transcripts pursuant to 28 U.S.C. §753, which also served notice to parties concerned that review on the "whole" record was required by petitioner.

On September 8, 1976, motion for correction and modification of record was sent by petitioner to the District Court. Because of unsatisfied results, a motion to compel correction and modification of record, including release and incorporation of transcripts of hearing were made to the Court of Appeals on September 30, 1976. The Court of Appeals referred the matter back to the District Court.

To save appeal rights, petitioner was compelled to appeal without the entire record on appeal and on October 26, 1976, petitioner filed a brief in support of appeal.

On November 23, 1976, brief for respondent was filed in the Circuit Court requesting judgment of the District Court be affirmed.

On December 6, 1976, petitioner filed a reply brief in the Circuit Court.

On March 10, 1977, Judge Brotman of the federal District Court, filed an order denying in part petitioner's motion for correction and record.

On March 12, 1977, petitioner received a copy of decision on motion for the first time transcribed by the court reporter based on his memory. This decision contains incorrect information, is misleading and does not tell the truth of what transpired on June 17, 1976 and does not show exceptions and objections made by petitioner.

On March 14, 1977, petitioner filed a motion in the Circuit Court to vacate the order and to compel correction and modification of record, including the release and incorporation of transcripts of hearing. Contrary to the contentions in Judge Brotman's order, transcript of final hearing had not been received by petitioner. On March 26, 1977, appellant filed motion with the Circuit Court to strike affidavit of Stephen J. Danner, for reasons of lack of credibility, hearsay information not made under oath. There was no evidence that the affidavit had been certified by the District Court and was legally inadmissible. Motion was denied by the Circuit Court of Appeals.

On April 5, 1977, a judgment order was filed by the Court of Appeals for the Third Circuit, which adjudged and ordered that the judgment of the District Court be and is hereby affirmed.

On April 13, 1977, petition for rehearing was made by petitioner, based on the decision being contrary to the decision

of the Circuit Court of Appeals, Supreme Court of the United States, laws and Constitutions of the United States and the State of New Jersey, contrary to evidence and verifiable facts, and was a matter of public interest since the integrity and reputation of our judicial systems were involved.

Petition for a rehearing was denied by the Circuit Court on April 22, 1977 without record or reason for not taking mandatory judicial notice.

Respondent did not file an answer within 60 days and a request for extension was not made until after expiration date. Over opposition filed by petitioner based on Rule 6 of the Federal Rules of Civil Procedure, with respect to absence of "excusable neglect," demonstration of "bad" faith, and no reasonable basis for not complying within the specified period, and petitioner's affidavit submitted to the District Court on May 7, 1976, reiterating misrepresentation, conflicts in statements, irregularities, continuance of "bad faith," on May 13, 1976, a court order was filed granting defendant's extension of time to answer.

During the interim, the clerk of the District Court erroneously permitted respondent to file an answer on April 20, 1976 when time had expired and an extension had not been granted. To aid in the "mootness" of this issue, for reasons unknown, Judge Brotman by letter dated April 7, 1976 changed the hearing date to May 7, 1976 (after due date for extension was requested).

These actions were not only prejudicial, but not in



accordance with rules of civil procedure. Petitioner's contentions were proven correct as respondent never effectively responded to all the allegations and issues in the complaint, but were only stalling for time for dismissal based on two Supreme Court decisions made on June 1, 1976.

Respondent's answer was filed on April 20, 1976 and based on same not in conformance with Rule 8(a), (b) and (c) of the Federal Rules of Civil Procedure. On May 14, 1976, petitioner filed a notice of motion and motion for specific denial and more definitive reply as the answer provided no basis or grounds whatsoever relied upon for answer and as such petitioner was deprived of the right to make an effective response. Answer precluded substantial justice and did not satisfy the requirement of "good faith" as set forth in Rule 11 of the Federal Rules of Civil Procedure.

In response, respondent on May 25, 1976 filed a motion to dismiss or in the alternative for summary judgment *and* a brief in support of defendant's motion to dismiss or in the alternative motion for stay of proceedings. This was in violation of Rule 12(b) of the Federal Rules of Civil Procedure, which states "a motion making any of these defenses shall be made before pleading if a further pleading is permitted" and provides that matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

On June 2, 1976, petitioner filed a memorandum in opposition to defendant's motion to dismiss motion for stay in proceedings or in the alternative motion for summary judgment *and* affidavit for summary judgment in favor of petitioner. The records reflect no consideration was given to petitioner's motion by the court in violation of Rules 54 and 56 of the Federal Rules of Civil Procedure.

On June 8, 1976, court order was filed denying petitioner's motion for specific denial and definitive reply, stating in part that same was "without merit."

As there was no way for petitioner to respond to the answer filed on April 20, 1976 to two decisions made by the Supreme Court on June 1, 1976 which was relied upon on respondent's motion for dismissal, petitioner's right to due process and equal treatment under the law was erroneously denied by the court.

Petitioner's reply brief filed in the Circuit Court on December 6, 1976 called the court's attention to the completely false and misleading information in the brief for appellee. That brief was signed by an "unauthorized" person who did not identify himself as an attorney. Petitioner considers this was done to avoid "perjury" and further charges of misconduct by the respondent's attorney.

It should be further noted that the District Court order dismissed the complaint on grounds that the court lacked subject matter jurisdiction and if subject matter is lacking in trial court, jurisdiction of the Court of Appeals on review is limited to correcting error of the trial court in entertaining jurisdiction.



Since no judgment had been made in the District Court which had by virtue of its order for dismissal no power to decide on the merits, it would be improper to affirm something that doesn't exist.

The judgment order (Appendix A) implies that the decision was based upon contentions of the appellant; however, relief was granted to an "imposter" who furnished false and misleading information.

### **REASONS FOR GRANTING THE WRIT**

Review of the "whole" record of the proceedings will show that

(1) The District Court's dismissal for lack of subject matter jurisdiction was clearly erroneous, contrary to facts and evidence not disputed by respondent in the complaint as such, the Circuit Court's judgment order is clearly erroneous, contrary to law and the Constitution of the United States;

(2) Petitioner was deliberately denied due process and equal treatment by the courts;

(3) By the courts' actions/inactions, omissions and disregard for the rules, laws, decisions of the Supreme Court and the Constitution of the United States, and laws and decisions of the forum State of New Jersey, the courts had no intention in giving petitioner's complaint just and bona fide consideration as a "whole" and in its entirety;

(4) The Court aided and abetted the respondent in obtaining dismissal through deceitful and fraudulent tactics by permitting violation of court rules and destroying petitioner's right of judicial review and relief by allowing the issues to be split for the purpose of destroying all others and by concealing the truth through suppression of records, thereby depriving petitioner's right to review on the complete and whole record;

(5) The courts has no intention of taking judicial notice of items which were mandatory or applying the principles of the Constitution of the United States; namely, Article IV, Sections 1 and 2, Amendment Five, Amendment Six, Amendment Eight, Amendment Thirteen, Sections 1 and 2 and Amendment Fourteen, Section 1;

(6) To avoid gross injustice, the issuance of this writ is necessary since at the risk of abuse of discretion and in excess of their power and jurisdiction, the lower courts have continually declined to address the principal issues of the complaint and to assert any effort to ascertain the truth. The fact that the respondent is the powerful government should be immaterial in a court of law which is responsible to oversee and administer justice. The actions/inactions of the courts, coupled with the protection of absolute immunity of the U.S. Attorney for misconduct, unethical, unlawful, deceitful and fraudulent tactics, makes it impossible for the judicial review, relief and remedies sought to be obtained in the lower courts and all such rights of petitioner will be forever lost.

**CONCLUSION**

For the foregoing reasons, this petition for a writ of certiorari should be granted to review the decisions of the courts below and to decide the questions herein.

Respectfully submitted,

s/ LaGretta B. Fisher  
*Petitioner pro se*

**APPENDIX A**

**JUDGMENT ORDER OF THE UNITED STATES COURT  
OF APPEALS FOR THE THIRD CIRCUIT**

UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT

No. 76-2195

LaGRETТА B. FISHER,

Appellant

v.

LIEUTENANT GENERAL WALLACE H. ROBINSON, JR.,  
Director, Defense Supply Agency, Official of the United States  
Government

On Appeal from the United States District Court for the District  
of New Jersey  
Civil No. 75-2242

Submitted Under Third Circuit Rule 12(6)  
March 31, 1977

Before: ADAMS, ROSENN and WEIS, *Circuit Judges.*

**JUDGMENT ORDER**

2a

*Appendix A*

After consideration of all contentions raised by appellant, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Each party to bear its own costs.

BY THE COURT,

s/ R.M. Adams  
Circuit Judge

ATTEST:

s/ Thomas F. Quinn  
Thomas F. Quinn, Clerk

DATED: Apr. 5, 1977

3a

**APPENDIX B**

**DENIAL OF SUR PETITION FOR REHEARING OF THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT**

UNITED STATES COURT OF APPEALS

For the Third Circuit

No. 76-2195

LaGRETТА B. FISHER,

Appellant

v.

LIEUTENANT GENERAL WALLACE H. ROBINSON, JR.,  
etc.

(Civil No. 75-2242)

**SUR PETITION FOR REHEARING**

Present: SEITZ, Chief Judge, VAN DUSEN, ALDISERT,  
ADAMS, GIBBONS, ROSENN, HUNTER, WEIS and  
GARTH, *Circuit Judges*

The petition for rehearing filed by Appellant in the above  
entitled case having been submitted to the judges who

4a

*Appendix B*

participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ R.M. Adams  
Circuit Judge

Dated: April 22, 1977

5a

**APPENDIX C**

**DENIAL OF MOTION OF THE UNITED STATES COURT  
OF APPEALS FOR THE THIRD CIRCUIT**

**UNITED STATES COURT OF APPEALS FOR THE THIRD  
CIRCUIT**

April 1, 1977

No. 76-2195

LaGretta B. Fisher,

Appellant

vs.

**LIEUTENANT GENERAL WALLACE H. ROBINSON, JR.,  
DIRECTOR, DEFENSE SUPPLY AGENCY, OFFICIAL OF  
THE UNITED STATES GOVERNMENT**

(D.C. Civil No. 75-2242)

Present: ADAMS, ROSENN and WEIS, *Circuit Judges*

1. Motion by appellant to strike the Affidavit of Stephen J. Daner, Official Court Reporter,
2. Affidavit of Stephen J. Daner, Official Court Reporter, advising that the stenographic record



6a

*Appendix C*

taken on June 17, 1976 is not available for transcription,

3. Copy of this Court's order dated October 19, 1977, sent for your information,

in the above-entitled case submitted March 31, 1977.

Respectfully,

Clerk

enc.

ags

The foregoing Motion is denied.

By the Court,

s/ R.M. Adams  
*Judge*

Dated: April 11, 1977

7a

**APPENDIX D**

**ORDER OF BROTMAN, J. DATED MARCH 10, 1977**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**LA GRETTA B. FISHER**

v.

**LIEUTENANT GENERAL WALLACE H. ROBINSON, JR.,  
DIRECTOR, DEFENSE SUPPLY AGENCY, OFFICIAL OF  
THE UNITED STATES GOVERNMENT**

Civil Action No. 75-2242

**O R D E R**

This matter having been opened to the court by plaintiff, LaGretta B. Fisher, pro se, on her motion for correction and modification of the record, it is hereby ordered that plaintiff's motion is granted in part and denied in part as follows: whereas it appears that the court reporter has furnished transcripts of the three hearings to plaintiff, plaintiff's motion to modify the record to include transcripts is denied; plaintiff's request to have docket entry number three (3) changed to read 4/6/76 instead of 5/7/76 is granted; plaintiff's request to add other docket entries concerns matters not filed with the clerk and is denied.

s/ Stanley S. Brotman  
**STANLEY S. BROTMAN**  
United States District Judge

8a

*Appendix D*

Dated: March 10, 1977

Original Filed

Mar. 10, 1977

Angelo W. Locascio

Clerk

**APPENDIX E**

**ORDER OF BROTMAN, J. DATED JUNE 18, 1976**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

LA GRETTA B. FISHER,

Plaintiff,

-v-

LIEUTENANT GENERAL WALLACE H. ROBINSON, JR.,  
DIRECTOR, DEFENSE SUPPLY AGENCY, OFFICIAL OF  
THE UNITED STATES GOVERNMENT,

Defendant.

Civil Action No. 75-2242

JUDGE STANLEY S. BROTMAN

9a

*Appendix E*

**O R D E R**

This matter having been opened to the Court on motion of United States Attorney to dismiss the complaint on the grounds that the Court lacks subject matter jurisdiction,

And the Court having reviewed the briefs submitted by counsel and having heard oral argument,

And the Court having rendered its decision at the oral hearing on June 17, 1976, that the Court is without subject matter jurisdiction,

IT IS ON THIS 18th day of June, 1976, ORDERED AND ADJUDGED that the complaint be Dismissed with prejudice and without costs.

s/ Stanley S. Brotman  
STANLEY S. BROTMAN  
Judge, U.S. District Court

Original Filed

June 18, 1976

Angelo W. Locascio

Clerk

No. 76-1613

Supreme Court U. S.

FILED

JUL 29 1977

MICHAEL RODAK, JR., CLERK

---

**In the Supreme Court of the United States**

OCTOBER TERM, 1977

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**LAGRETTA B. FISHER, PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT**

---

**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

---

**WADE H. MCCREE, JR.,**  
*Solicitor General,*  
*Department of Justice,*  
*Washington, D.C. 20530.*

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**In the Supreme Court of the United States**

OCTOBER TERM, 1977

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No. 76-1613

LAGRETTA B. FISHER, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

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Petitioner, an employee of the Defense Supply Agency, Department of Defense, who was downgraded from a GS-11 to a GS-9 as part of a reduction in force, contends that she was discriminated against on the basis of race and sex.

1. Petitioner, a Contract Administrator with the Defense Supply Agency, Philadelphia, received notice on November 17, 1970, that she was to be reduced-in-force from her position as a GS-11 (Admin. Rec. 128-133). She was offered, and accepted, a position as a GS-9. She then appealed the reduction-in-force to the regional office of the Civil Service Commission (Admin. Rec. 101-122). On May 3, 1971, the Civil Service Commission sustained the agency action, stating that the reduction-in-force was effected in accordance with the Commission's retention preference regulations, 5 C.F.R. Part 351 (Admin. Rec.



56). The decision informed petitioner that she must appeal within 15 days of its receipt, as required by 5 C.F.R. 752.203. Petitioner did not appeal, however, until May 29, 1971. The Board of Appeals and Review denied petitioner's appeal on June 22, 1971, on the ground that it was not timely filed (Admin. Rec. 14). Petitioner's request for reopening and reconsideration was denied on August 19, 1971, and this was the final administrative action on petitioner's claim (Admin. Rec. 2-3).

Nearly four and a half years later, on December 30, 1975, petitioner brought suit in the United States District Court for the District of New Jersey, attacking the reduction-in-force and the 1971 action of the Civil Service Commission, and alleging a host of other abuses, some apparently occurring before 1971 and some occurring between 1971 and 1973. (See Pet. App. 7a.) The thrust of petitioner's complaint is apparently that she had been discriminated against on the basis of race and sex. The district court dismissed for want of subject matter jurisdiction (Pet. App. 9a), and the court of appeals affirmed (Pet. App. 1a-2a).

2. The courts below properly dismissed this action for want of subject matter jurisdiction. In *Brown v. General Services Administration*, 425 U.S. 820, this Court held that Section 717 of the Civil Rights Act of 1964, as added by Section 11 of the Equal Employment Opportunity Act of 1972, 86 Stat. 111, 42 U.S.C. (Supp. V) 2000e-16, provides the exclusive judicial remedy for federal employment discrimination occurring after its effective date, March 24, 1972, and that, "it was doubtful that backpay or other compensatory relief for employment discrimination was available at the time that Congress was considering the 1972 Act" (425 U.S. at 826). See also *Gnotta v. United States*, 415 F. 2d 1271 (C.A. 8); *Blaze v. Moon*, 440 F. 2d 1348 (C.A. 5). The Title VII remedy provided by the 1972 Amendments

was not available to petitioner, since the administrative proceedings on her claim with respect to a reduction-in-force were completed on August 19, 1971.<sup>1</sup> Petitioner has identified no alternative statute that waives sovereign immunity in employment discrimination cases so as to provide the district court with jurisdiction over her claim, and the 1972 Amendments to Title VII have rendered the question of pre-existing judicial remedies for alleged race and sex discrimination in government employment a matter without substantial continuing importance.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,  
Solicitor General.

JULY 1977.

<sup>1</sup>The Section 717 remedy for federal employment discrimination is retroactively available only to employees whose administrative complaints were pending on March 24, 1972. See *Sperling v. United States*, 515 F. 2d 465 (C.A. 3), certiorari denied, 426 U.S. 919; *Brown v. General Services Administration*, 507 F. 2d 1300 (C.A. 2), affirmed, 425 U.S. 820.